

UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY

UNITED STATES OF AMERICA : Criminal Number
:
v. : 18 U.S.C. §§ 1341 (Mail Fraud);
: 1343 (Wire Fraud); 1503
CHARLES D. CONWAY : (Obstruction of Justice);
: 1512(c)(Tampering with a
: Witness); 1621 (Perjury); 2
: (Aiding and Abetting);
: 1956(a)(1), 1956(a)(2),
: 1957(Money Laundering);
: 26 U.S.C. §7201 (Tax Evasion)

INDICTMENT

The grand jury in and for the District of New Jersey,
sitting at Trenton, charges:

COUNTS ONE through ELEVEN

(Rita and Harry Greenberger Foundation Mail and Wire Fraud)

The Relevant Parties and Entities

1. At various times relevant to this Indictment, the defendant **CHARLES D. CONWAY**, was an attorney admitted to the practice of law in New Jersey. From 1985 through 1992, **CONWAY** was employed by a law firm in Middletown, New Jersey. From 1992 through 2001, **CONWAY** was a sole practitioner with offices at various locations including 157 Route 37 West, in Toms River, New Jersey. On May 5, 2001, **CONWAY** was temporarily suspended from the practice of law and disbarred on May 21, 2003.

2. At all times relevant to this Indictment, The Rita and Harry Greenberger Foundation, Inc. (the "Greenberger

Foundation") was a not-for-profit charitable organization, created in the last will and testament of Elaine G. Kislak ("Kislak") solely for scientific, educational and charitable purposes within the meaning of Section 501(c)(3) of the Internal Revenue Code of 1986. Kislak died on February 24, 1989. **CONWAY** was the executor of Kislak's will and was one of three trustees of the Greenberger Foundation. The two other trustees are persons known to the grand jury and hereinafter referred to as "Trustee R.L." and "Trustee C.G." The by-laws of the Greenberger Foundation required the consent of at least two trustees before any funds could be disbursed.

3. At all times relevant to this Indictment, Serhus Conway & Suss Global Investments, LLC ("SCS") was a New Jersey limited liability company formed by **CONWAY** and two other individuals, ostensibly for the purpose of trading in foreign currency.

4. At all times relevant to this Indictment, FX Capital Management, LLC ("FX LLC") was a company formed in July 1997 by **CONWAY** and two other individuals, ostensibly for the purpose of trading in foreign currency.

5. At all times relevant to this Indictment, the FX 2000 Fund, L.P. ("FX L.P.") was a limited partnership formed in October 1997 by **CONWAY** and FX LLC.

6. At all times relevant to this Indictment, the FX

2000 Fund, Ltd. ("FX Ltd.") was a financial company incorporated in the British Virgin Islands to invest and trade in currencies. FX Ltd. was dissolved on or about November 30, 1998.

7. At all times relevant to this Indictment, Private Trust Corporation Ltd. was a Bahamian bank and trust company.

The Scheme and Artifice to Defraud

8. In or about and between early 1995 and the date of the filing of this Indictment, in the District of New Jersey and elsewhere, the defendant, **CHARLES D. CONWAY**, knowingly and willfully devised and intended to devise a scheme and artifice to defraud the Rita and Harry Greenberger Foundation and to obtain money and property from it by means of materially false and fraudulent pretenses, representations, and promises, which scheme and artifice is in substance as set forth in paragraphs 9 through 13 of this Indictment.

9. The object of the scheme and artifice to defraud was **CONWAY's** personal enrichment through embezzling and converting funds of the Greenberger Foundation to his own use.

10. It was part of the scheme and artifice to defraud that **CONWAY** established several bank and investment accounts, including offshore accounts, in order to transfer the funds of the Greenberger Foundation and place them beyond the control of trustees R.L. and C.G.

11. It was a further part of the scheme and artifice to defraud that **CONWAY** formed the Rita and Harry Greenberger

Foundation Inc., a Bahamian Corporation (the "Bahamian Foundation") and attempted to merge the Greenberger Foundation with the Bahamian Foundation in order to place the funds of the Greenberger Foundation beyond the control of trustees R.L. and C.G.

12. It was a further part of the scheme and artifice to defraud that **CONWAY** would embezzle funds belonging to the Greenberger Foundation and use these funds to purchase residential and commercial real property, to establish and capitalize businesses in which he was involved and to trade in foreign currencies.

13. It was a further part of the scheme and artifice to defraud that **CONWAY** attempted to conceal the scheme and artifice to defraud by misrepresenting the amount of funds remaining in Greenberger Foundation accounts in order to convince trustees C.G. and R.L. to dismiss a lawsuit where he was about to be joined and named as a defendant.

Serhus Conway & Suss Global Investments, LLC

14. On or about December 2, 1996, **CONWAY** formed Serhus Conway & Suss Global Investments, LLC with two partners, ostensibly for the purpose of trading in foreign currencies. SCS maintained offices at 106 Apple Street in Tinton Falls, New Jersey.

15. As of October 31, 1996, the Greenberger Foundation had a balance of \$1,372,781.41 in an account at Rochdale

Investment Management Inc. (The "Rochdale Account"). On or about November 22, 1996, **CONWAY** fraudulently misappropriated funds from the Greenberger Foundation by withdrawing \$200,000 from the Rochdale account to capitalize SCS. **CONWAY** then deposited this check into his attorney trust account and on or about December 5, 1996, **CONWAY** drew a check in the amount of \$200,000 from his Attorney Trust account made payable to SCS Global Investments, LLC. **CONWAY** used \$25,000 of these funds to purchase his share, a one third interest in SCS, and purported to "loan" \$175,000 to SCS. In or about May 1997, SCS ceased doing business.

FX LLC and IFX Markets Ltd.

16. It was a further part of the scheme and artifice to defraud that in or about July 1997, **CONWAY** and two former members of SCS (the "FX Partners") formed FX Capital Management, LLC ("FX LLC"). FX LLC was established to engage in foreign currency trading, primarily through IFX Limited ("IFX"), a financial trading and spread-betting company based in London, England. FX LLC continued to use the SCS account at PNC Bank (the "SCS PNC Account") until it established an account at Citibank in New York.

17. On or about April 18, 1997, **CONWAY** fraudulently misappropriated funds from the Greenberger Foundation by withdrawing \$893,747.13 from an account maintained by the Greenberger Foundation at Rochdale Investment Management and deposited these funds into his attorney trust account. On or

about June 24, 1997, **CONWAY** caused this money to be deposited into the SCS PNC account.

18. On or about June 27, 1997, **CONWAY** caused \$900,000, which included the Greenberger Foundation funds, to be wire-transferred from the SCS PNC account to IFX in London, England.

19. In October 1997, **CONWAY** and the FX Partners formed the FX 2000 Fund, L.P. ("FX L.P."), a limited partnership. FX LP also maintained an account at Citibank in New York.

The Elaine G. Kislak Scholarship Trust Account

20. On or about July 1, 1999, **CONWAY** opened an account at The Northern Trust Company in Chicago in the name of The Elaine G. Kislak Scholarship Trust (the "Scholarship Trust Account").

21. On or about July 6, 1999, **CONWAY** fraudulently misappropriated \$142,866.13 by drawing a check in that amount from the Rita and Harry Greenberger Foundation account at the United Counties Trust Company and depositing those funds into the Scholarship Trust account.

The Purchase of 813 South Bay Avenue, Beach Haven, New Jersey

22. On or about July 12, 2000, **CONWAY** fraudulently misappropriated funds from the Greenberger Foundation by drawing a \$55,000 check from the Scholarship Trust account and depositing that check into **CONWAY's** personal account at The Bank of New York.

23. On or about July 17, 2000, **CONWAY** drew a check on his personal account in the amount of \$54,750 made payable to Weichert Realtors as a down payment for the purchase of real property at 813 South Bay Avenue, Beach Haven, New Jersey (the "Beach Haven Property").

24. On or about August 29, 2000, **CONWAY** fraudulently misappropriated funds from the Greenberger Foundation by drawing a \$50,000 check from the Scholarship Trust account payable to KEC Realty. On or about October 12, 2000, **CONWAY** deposited that check into an account he controlled at the Bank of New York in the name of KEC Realty Company (the "KEC Account").

25. On or about October 23, 2000, **CONWAY** drew a check on the KEC Realty account in the amounts of \$98,669.52 and used those funds in the purchase of the Beach Haven property.

26. On or about October 23, 2000, **CONWAY** purchased the Beach Haven property for \$547,550, which included:

- a. The \$54,750 deposit referred to in paragraph 23;
- b. Cash in the amount of \$96,625.02 referred to in paragraph 25;
- c. A mortgage in the amount of \$399,500 obtained from Altegra Credit Company ("the Altegra loan").

The Purchase of 157 Route 37 West, Toms River

27. On or about April 18, 1996, **CONWAY** fraudulently misappropriated \$9,500 from the Greenberger Foundation by drawing

a check in that amount made payable to himself from the Rita and Harry Greenberger Foundation account at the Bank of New York.

CONWAY then deposited the check into his attorney trust account and used those funds as a deposit for the purchase of a commercial office building at 157 Route 37 West, Toms River, New Jersey (the "Toms River office building").

28. On or about May 10, 1996, **CONWAY** fraudulently misappropriated \$185,000 by drawing a certified check in that amount from the Rita and Harry Greenberger Foundation account at the Bank of New York. **CONWAY** then used those funds as a further payment for the purchase of a Toms River office building.

29. On or about May 4, 2001, **CONWAY** transferred the title for the Toms River office building to the LBI Annuity Trust.

30. On or about May 10, 2001, **CONWAY** sold the Toms River office building for \$500,000. On or about May 14, 2001, **CONWAY** deposited \$447,246, which represented the proceeds of the sale of the Toms River office building, into an account he maintained in the name of LBI Annuity Trust at Sun National Bank (the "LBI account").

31. On or about May 31, 2001, **CONWAY** drew a check on the LBI account in the amount of \$402,297.29 and used those funds to draw a cashier's check from Sun National Bank in the same amount, and forwarded those funds to Altegra Credit Company to

pay off the mortgage on 813 South Bay Avenue, Beach Haven.

The Greenberger Foundation Lawsuit

32. On or about July 9, 1998, the trustees of the Greenberger Foundation filed a lawsuit in the United States District Court for the District of New Jersey (the "lawsuit") against FX 2000 LP, FX 2000 Fund, Ltd. and other entities and individuals including **CONWAY'S** two former partners in FX 2000 LP (the "FX Partners"). The Complaint filed with the lawsuit alleged that the FX Partners and the named entities defrauded the Greenberger Foundation of \$893,747.

33. At the time the lawsuit was filed, Trustees C.G. and R.L. and the attorney representing the Greenberger Foundation (the "Foundation Attorney") were unaware that **CONWAY** held interests in FX 2000 LP and FX 2000 Fund Ltd.

34. On or about October 19, 1998, the FX Partners, in response to the lawsuit, filed motions to dismiss and for sanctions in which they alleged that, at the time **CONWAY** transferred Greenberger Foundation funds to FX Capital, then to FX 2000 Fund, he was a "principal owner" of FX Capital and a signatory of both the FX Capital and FX 2000 fund accounts.

35. On October 30, 1998, the Foundation Attorney wrote a letter to **CONWAY** stating that:

a. he and Trustees C.G. and R.L. were not aware that **CONWAY** had transferred \$200,000 of Foundation funds to SCS;

b. he and Trustees C.G. and R.L. were not aware that **CONWAY** had an ownership interest in FX 2000 Capital or that he had transferred Greenberger Foundation funds to the FX 2000 Fund prior to August 5, 1997;

c. **CONWAY** may have breached his fiduciary duties owed to the Greenberger Foundation by "engaging in transactions for [his] personal benefit with the Foundation's money";

d. trustees C.G. and R.L. believe that **CONWAY** should take a leave of absence from the Board of Trustees and turn over all books and records of the Greenberger Foundation;

e. if the facts alleged by the FX Partners are true the likelihood of prevailing in the lawsuit is remote.

36. On or about November 4, 1998, **CONWAY** sent a memo to the Foundation Attorney by telefax in which he did not deny transferring Greenberger Foundation funds to SCS but claimed that "the alleged \$200,000 loss was not from investment but from operations."

37. Shortly thereafter, Trustees C.G. and R.L. directed the Foundation attorney to amend the Complaint and add **CONWAY** as a defendant.

38. In response to this, **CONWAY** contacted Trustee R.L.

and falsely stated that there were no funds left in the Greenberger Foundation to pursue the lawsuit and if she persisted in naming him as a defendant, Trustee R.L. would also be sued.

39. On November 12, 1998, and again on November 30, 1998, **CONWAY** sent letters by facsimile and regular mail to the Foundation Attorney requesting that the lawsuit be withdrawn.

40. Based in part on **CONWAY**'s false misrepresentations to trustees R.L. and C.G., the lawsuit was dismissed on motion of the Foundation Attorney on or about December 4, 1998.

41. On or about February 3, 1999, **CONWAY** mailed letters to trustees C.G. and R.L. wherein he stated that one account of the Greenberger Foundation account had a balance of \$11,446.90 and another account had a balance of \$1,905.08. **CONWAY** then falsely stated that "This is all the cash we have at our disposal as of this writing."

The Private Trust Corporation Limited

42. On or about December 4, 1998, **CONWAY** opened an account in the name of the Rita and Harry Greenberger Foundation, Inc. at Private Trust Corporation Limited in Nassau, Bahamas (the "PTC account").

43. On or about November 12, 1998, **CONWAY** fraudulently misappropriated funds from the Greenberger Foundation by drawing a check in the amount of \$4,050 from an account at United Trust Company and causing those funds to be transferred from Lincroft, New Jersey to Nassau, Bahamas and deposited into the PTC account.

44. On or about February 16, 1999, **CONWAY** fraudulently misappropriated funds from the Greenberger Foundation by drawing a check in the amount of \$3,020 from an account at United Trust Company and causing those funds to be transferred from Lincroft, New Jersey to Nassau, Bahamas and deposited into the PTC account.

45. On or about November 2, 1999, **CONWAY** fraudulently misappropriated funds from the Greenberger Foundation by causing \$101,671.86 to be transferred from an account at Citco Bank in the British Virgin Islands, to Nassau, Bahamas, and deposited into the PTC account.

46. On or about August 10, 2000, **CONWAY** caused a letter to be sent to PTC wherein he requested the return of all Greenberger Foundation funds held by PTC.

47. On or about September 1, 2000, **CONWAY**, caused PTC to draw a check on Barclays Bank in the amount of \$101,713.76 payable to Charles D. Conway (the "PTC check") and mail that check to him in New Jersey.

48. On or about September 27, 2000, **CONWAY** deposited the PTC check into the KEC account at Bank of New York.

Mailings and Wire Transfers

49. On or about the dates set forth below, for the purpose of executing the scheme and artifice to defraud and attempting to do so, in the District of New Jersey and elsewhere, defendant

CHARLES D. CONWAY

knowingly and wilfully, placed and caused to be placed in post offices and authorized depositories for mail matter, the matters and things listed below to be sent and delivered by the U.S. Postal Service, and deposited and caused to be deposited the matters and things listed below to be sent or delivered by private and commercial interstate carriers, and took and received therefrom, the matters and things set forth below, and transmitted and caused to be transmitted by means of wire communications in interstate and foreign commerce, writings, signs, signals, pictures and sounds as follows:

COUNT	DATE	DESCRIPTION
1 Wire Fraud	11/5/1998	Facsimile from Charles Conway in Toms River, NJ to Citco Fund Services, Tortola, British Virgin Islands
2 Mail Fraud	11/12/98	Letter from Charles Conway to the Foundation Attorney
3 Mail Fraud	11/30/98	Letter from Charles Conway to the Foundation Attorney
4 Mail Fraud	2/3/1999	Letter from Charles Conway to Trustees C.G. and R.L.
5 Mail Fraud	8/10/2000	Letter from Charles Conway to Private Trust Corporation, Nassau, Bahamas
6 Wire Fraud	9/8/2000	Facsimile from Private Trust Corporation Ltd., Nassau, Bahamas to Charles Conway, Toms River, NJ
7 Wire Fraud	10/23/2000	Facsimile from Charles Conway regarding the closing on the Beach Haven property
8 Mail Fraud	10/24/2000	Closing package for Beach Haven property sent by FedEx from Lafayette General Title to First Franklin Financial Corporation
9 Mail Fraud	2/20/2001	Letter forwarding contract for sale of Toms River office building sent from Conway to buyer's attorney
10 Mail Fraud	2/23/2001	Letter forwarding back title for Toms River office building sent from Conway to buyer's attorney
11 Mail Fraud	3/1/2001	Letter requesting balance of down payment for sale of Toms River office building sent from Conway to buyer's attorney

In violation of Title 18, United States Code, Sections 1341,

1343, and 2.

COUNTS TWELVE through FOURTEEN
(Money Laundering-The PTC Transactions)

50. The allegations contained in paragraph 1 through 48 of this Indictment are hereby realleged as if set forth herein.

51. On or about the dates listed below, in the District of New Jersey and elsewhere, defendant

CHARLES D. CONWAY

knowingly and wilfully transported, transmitted and transferred monetary instruments and funds, to wit: checks and wire transfers as specified below, from a place in the United States, as specified below, to a place outside the United States, that is Nassau, Bahamas, knowing that the monetary instruments and funds involved in the transfers represented the proceeds of unlawful activity, and knowing that the transportation, transmission and transfer was designed in whole and in part to conceal and disguise the nature, the location, the source, the ownership and the control of the proceeds of the specified unlawful activity.

Count	Date	Amount	Description
12	11/12/1998	\$4,050.00	Check sent from Rita and Harry Greenberger Foundation account at United Trust Company, Lincroft, New Jersey to Private Trust Company, Nassau, Bahamas
13	2/16/1999	\$3,020.00	Check sent from Rita and Harry Greenberger Foundation account at United Trust Company Lincroft, New Jersey to Private Trust Company, Nassau, Bahamas
14	11/2/1999	\$101,671.86	Wire transfer from FX 2000 Fund, Ltd. Ocean, New Jersey to Private Trust Company, Nassau, Bahamas through Citco Bank Limited, British Virgin Islands

In violation of Title 18, United States Code, Sections 1956(a)(2)(B)(i) and 2.

COUNT FIFTEEN

(Money Laundering-The Private Trust Corporation)

52. The allegations contained in paragraph 1 through 48 of this Indictment are hereby realleged as if set forth herein.

53. On or about November 2, 1999, in the District of New Jersey and elsewhere, defendant

CHARLES D. CONWAY

did knowingly and wilfully engage and attempt to engage in a monetary transaction by, through and to a financial institution, affecting interstate and foreign commerce, in criminally derived property of a value greater than \$10,000, such property having been derived from a specified unlawful activity, that is a scheme and artifice to defraud the Rita and Harry Greenberger Foundation, to wit: the deposit of \$101,671.86 into the PTC account, Nassau, Bahamas from Citco Bank, British Virgin Islands.

In violation of Title 18, United States Code, Sections 1957 and 2.

COUNT SIXTEEN
(Money Laundering-The Barclays Check)

54. The allegations contained in paragraphs 1 through 48 of this Indictment are hereby realleged as if set forth herein.

55. On or about and between August 10, 2000 and September 20, 2000, in the District of New Jersey and elsewhere, defendant

CHARLES D. CONWAY

knowingly and wilfully transported, transmitted and transferred and caused the transport, transmittal and transfer of a monetary instrument, to wit: a check drawn on Barclays Bank in the amount of \$101,713.76, from a place outside of the United States that is, Nassau Bahamas, to a place in the United States, that is Toms River, New Jersey, knowing that the monetary instruments and funds involved in the transfers represented the proceeds of specified unlawful activity, and knowing that the transportation, transmission and transfer was designed in whole and in part to conceal and disguise the nature, the location, the source, the ownership and the control of the proceeds of the specified unlawful activity.

In violation of Title 18, United States Code, Sections 1956(a)(2)(B)(i) and 2.

COUNTS SEVENTEEN THROUGH TWENTY-FIVE
(Money Laundering-Purchase of Beach Haven Property)

56. The allegations contained in paragraphs 1 through 48 of this Indictment are hereby realleged as if set forth herein.

57. On or about the dates specified below, in the District of New Jersey and elsewhere, the defendant

CHARLES D. CONWAY

knowing that the property involved in the financial transaction represented the proceeds of some form of unlawful activity, did knowingly conduct and attempt to conduct, such a financial transaction affecting interstate and foreign commerce which in fact involved the proceeds of specified unlawful activity, knowing that the transaction was designed in whole or in part to conceal and disguise the source, ownership and control of the proceeds of specified unlawful activity, to wit:

Count	Date	Amount	Description
17	6/12/2000	\$55,000	Check drawn on Scholarship Trust Account deposited into Bank of New York account
18	6/17/2000	\$54,750	Check drawn on Bank of New York Account made payable to Weichert Realtors as down payment on Beach Haven Property
19	8/29/2000-10/12/2000	\$50,000	Check drawn on the Scholarship Trust account made payable to KEC Realty deposited into KEC Realty account
20	10/23/2000	\$98,669.52	Check drawn on KEC Realty account used at closing of Beach Haven property
21	10/23/2000	\$547,500	Title to Beach Haven property transferred to Charles D. Conway
22	5/4/2001	\$1.00	Title to Toms River Office building transferred from KEC Realty to LBI Annuity Trust
23	5/10/2001	\$500,000	Toms River office building sold

24	5/14/2001	\$447,246	Proceeds of sale of Toms River office building deposited into LBI Annuity Trust account
25	5/31/2001	\$402,297.29	Check drawn on LBI account used to pay mortgage on Beach Haven property

In violation of Title 18, United States Code, Sections 1956 (a)(1)(B)(i) and 2.

COUNT TWENTY-SIX
(Obstruction of Justice)

58. At all times relevant to this Indictment, a federal Grand Jury duly empaneled on or about September 18, 2002 (the "Grand Jury"), was sitting at Trenton, in the District of New Jersey.

59. At all times relevant to this Indictment, the Federal Bureau of Investigation ("FBI") and the United States Postal Inspection Service ("USP") were agencies of the United States, charged with investigating violations of various federal laws.

60. During 2003 the defendant **CHARLES CONWAY** became the subject of a criminal investigation by the FBI and USP relating to his scheme to defraud the Rita and Harry Greenberger Foundation (the "Conway investigation").

61. On or about October 10, 2003, **CONWAY** mailed a package to a person known to the Grand Jury and hereinafter referred to as "M.F." containing a note and several documents.

62. On or about October 21, 2003, M.F. was served with a grand jury subpoena calling for M.F. to appear and give testimony before the Grand Jury on the Conway investigation.

63. On or about and between October 24, 2003 and November 5, 2003, **CONWAY** spoke with M.F. by telephone on several occasions in an attempt to set up a meeting.

64. On or about November 6, 2003, **CONWAY** met M.F. at the Americana Diner in Shrewsbury, New Jersey, and attempted to

convince M.F. to testify falsely and to present forged documents to the Grand Jury.

65. On or about November 16, 2003, **CONWAY** spoke with M.F. over the telephone and sent M.F. a document by telefax in an attempt to convince M.F. to testify falsely before the Grand Jury.

66. On or about and between October 10, 2003 and the date of the filing of this Indictment, in the District of New Jersey and elsewhere, the defendant,

CHARLES D. CONWAY,

knowingly and wilfully, corruptly endeavored to influence, obstruct and impede the due administration justice.

In violation of Title 18, United States Code, Sections 1503 and 2.

COUNT TWENTY-SEVEN
(Witness Tampering)

67. The allegations contained in paragraph 1 through 48 of this Indictment are hereby realleged as if set forth herein.

68. On or about and between October 2003 and the date of the filing of this Indictment, in the District of New Jersey and elsewhere, defendant

CHARLES D. CONWAY,

knowingly and wilfully, corruptly persuaded another person, and attempted to do so, and engaged in misleading conduct toward another person, with intent to influence the testimony of that person before the grand jury and did cause and induce that person to withhold testimony and alter, destroy, mutilate and conceal an object with intent to impair the object's integrity and availability for use in an official proceeding, namely the Grand Jury investigation as set forth above.

In violation of Title 18, United States Code, Sections 1512 (b) and 2.

COUNT TWENTY-EIGHT
(Perjury)

69. On December 4, 2003, in the District of New Jersey and elsewhere, the defendant,

CHARLES D. CONWAY,

having taken an oath before a competent tribunal, officer and person in a case in which a law of the United States authorizes an oath to be administered, namely, in testimony before a grand jury, that he would testify, declare, depose and certify truly and that any written testimony, declaration, deposition and certificate by him subscribed, would be true, willfully and contrary to such oath stated and subscribed material matter which he did not believe to be true, namely, the testimony on or about December 4, 2003, the underlined portions of which he believed to be materially false:

Specification One

(Page 29, Line 18 - Page 30, Line 2)

- Q: I'm asking you how the merger [of the Greenberger Foundation] came about in 1995. . . I'm asking you how the merger in 1995 four years after [Elaine Kislak's] death occurred, five years after her death occurred.
- A: Was a meeting of the trustees in 1993, at that meeting the three trustees voted on a number of things, one of which was the merger of the Kislak Foundation with another entity, I did not vote for the merger, if you read the minutes you'll see I abstained, okay. The merger came about. However, in the minutes they [Trustees R.L. and C.G.] directed me to do the merger.

* * *

- Q: Who was the merger with?
- A: The merger ultimately ended up with the Rita and Harry Greenberger in a Bahamian corporation.
- Q: Who first proposed this merger to the trustees?

A: [R. L.] had some concerns and this gets back to Elaine and her relatives-
Q: Sir, I'm asking a very simple question.
A: Go ahead.
Q: Which one of the three trustees-
A: [R.L.]
Q: --first proposed the merger?
A: [R.L.]

Specification Two

(Page 36, Line 10 - Page 37, Line 16)

Q: And with this merger were you still going to have the same kind of control, were all three trustees going to have equal control over the distribution of the Foundation?
A: We were stepping aside as trustees in favor of the gentleman down in the Bahamas, we were going to be officers of the Bahamian corporation.
Q: So, who was the officer who was going to be in charge of the distributions from here on?
A: I essentially maintained control over the accounts.
Q: But who was the Bahamian officer?
A: Peter Evans who is the --he's the one who heads this Bahamian bank.
Q: What was Mr. Evans' role going to be?
A: He was the director. In other words, he replaced the trustees.
Q: Okay. And what was his function going to be from here on? Would he have all the duties of a trustee?
A: Yes.
Q: Would he pass on decisions as far as bequests which the trustees had previously passed on?
A: He was more concerned about what, I mean, his responsibility was, but he wasn't really not too concerned about what charity got what money.
Q: What were the mechanics that you were going to use to make sure that Elaine Kislak's bequests were realized?
A: Well that became his responsibility as director.
Q: And he agreed to accept that?
A: That's right.

Specification Three

(Page 39, Line 1 - Page 40, Line 10)

Q: So, does that mean all of the assets of the New Jersey corporation were now under the control of Mr. Evans through the Bahamian corporation?
A: That's correct.

Q: So, that if you or the trustees wanted to make a bequest pursuant to the wishes of Elaine Kislak how would you go about doing that?

A: The procedure would have been to alert Mr. Evans.

Q: And then Mr. Evans, would he pass on-

A: Basically.

Q: --whether or not--

A: Basically.

Q: Did he have discretion to follow your bequests or did he have the ability-

A: Well-

Q: Please let me finish. Did he have discretion to follow your bequests or did he have the ability to refuse them?

A: He could refuse.

Q: So, how many bequests did you forward to Mr. Evans to be fulfilled under Ms. Kislak's will?

A: I'm not sure. I mean I honestly don't recall.

Q: Did you forward any to him?

A: Specific recommendations?

Q: Did you forward - - let me try to make this question as crystal clear as I can, from the time the New Jersey corporation was merged to the Bahamian corporation and Mr. Evans took over did you or any of the other trustees ask Mr. Evans to make any specific bequests to the will of Elaine Kislak? Yes or no?

A: I have to say yes, that we - -

Q: Name one.

A: Something - - something - - I just - - I can remember, something for the blind.

Specification Four

(Page 48, Line 15 - Page 49, Line 18)

Q: Were you in the process of purchasing real estate in 1996?

A: 1996 I bought -- I bought a building in Toms River.

Q: What's the address of that building?

A: 157 Route 37.

Q: Okay. And did you turn around after making this deposit from the Rita and Harry Greenberger Foundation and then draw a check in the same amount as the deposit for this building that you purchased?

A: Could very well have been. Could very well -- without going back and looking at my records --

Q: Was that a charitable bequest from Elaine Kislak to you?

A: What's that?

Q: The \$9500.00.

A: The \$9500.00? You haven't introduced our power of attorney --
Q: Sir, under what right you helped yourself to \$9500.00 from the charitable foundation, please, explain that.
A: All right. Yes. The power of attorney authorized me to make loans to myself --
Q: So, this was a loan?
A: -- and the minutes of that meeting in 1993 again authorized loans to officers.
Q: Sir, are you saying that this \$9500.00 was a loan that you made to yourself from the Foundation?
A: Yes.

Specification Five

(Page 50, Line 17 - Page 51, Line 2)

Q: So, you now recall that the \$9500.00 was a loan that you made to yourself from the funds of the Rita and Harry Greenberger Foundation, is that correct?
A: That's correct.
Q: And this check was drawn after the Bahamian merger?
A: That's correct.
Q: So, did you get Mr. Evans' permission --
A: Yes, I did.
Q: -- to make this loan?
A: Yes, I did.

Specification Six

(51, Page 10 - Page 52, Line 1)

Q: How many other loans did you make to yourself from the Rita and Harry Greenberger Foundation Fund?
A: There were I think six.
Q: Six? What was the total amount of money that you borrowed from the Foundation?
A: Total amount I believe was in the neighborhood of around 600 grand.
Q: How much of it have you repaid?
A: To date, none as of yet.
Q: So, you claim that the \$600,000.00 that you took from the Rita and Harry Greenberger Foundation was a loan, right?
A: They were loans, yes.
Q: And they were approved by the trustees, I presume?
A: Yes.

Specification Seven

(Page 54, Line 10 - Page 55, Line 5)

Q: I'm going to ask you to look at both of those documents together, 25 being a copy of a certified check request drawn on the Rita and Harry Greenberger Foundation in the amount of \$185,492.20 and then the second is Exhibit 26 showing that debit in the account in the Bank of New York. Can you identify those, sir? Yes?

A: Yes, 26 is a photocopy of a bank statement dated May of '96 and Number 25 is a certified check request again on Greenberger.

Q: And is this another loan, sir, that you took from the Rita and Harry Greenberger Foundation Fund?

A: Yes.

Q: And this loan, was this loan approved by both of the trustees?

A: [C.G. and R.L.?.]

Q: Yes.

A: Yes.

Specification Eight
(Page 56, Lines 11 - 24)

Q: And what was your proposal for repayment of these loans, sir?

A: They're all demand notes.

Q: They can be repaid upon demand, right?

A: Upon demand.

Q: You would be the one who would be making the demand, so if you don't make the demand they don't ever have to be paid, is that your testimony?

A: That's correct.

Q: Has anybody made a demand?

A: Nobody has made demands, Peter Evans has them, he could make the demand.

Q: Peter Evans has the notes?

A: Yes.

Specification Nine
(Page 58, Line 1 - -Page 60 Line 8)

Q: Excuse me one moment. Are you familiar with KEC Realty Company?

A: Yes.

Q: What is that?

A: KEC Realty Company is an entity I set up, I can't remember if I set it up as a limited partnership or limited liability company, but it's something that I established, yes.

Q: And what did you establish it for?

A: It may have been the -- may have involved the building I purchased, I'm not 100 percent sure.

Q: Would that be 157 Route 37 West in Toms River?

A: Correct. Correct.

Q: You remember what you paid for that building?

A: Was in the area of 200 grand.

Q: And was it completely financed with loans from the Rita and Harry Greenberger Foundation?

A: I think it was.

Q: Okay. You used the \$9500.00 deposit, correct?

A: Uh-huh.

Q: And the 185 plus thousand dollars went to pay for --

A: Right. So, maybe I had to use some of my own funds, was a little over 200. You know, I can't recall specifically.

Q: Then you subsequently sold that building, didn't you?

A: Yes, I did.

Q: How much did you get when you sold the building?

A: \$500,000.00.

Q: So, you made a tidy profit?

A: I did well.

Q: Did it ever occur to you to repay the loan that you used to borrow on that building?

A: Yes. Yes.

Q: But you didn't?

A: I didn't. There hadn't been a demand.

Q: Who would you expect to make a demand, sir?

A: Peter Evans.

Q: Oh, Peter Evans, he's very hard to get ahold of, I guess, right? So, Peter Evans doesn't make a demand you feel you have no obligation to repay this loan?

A: I didn't say that. I didn't say that.

Q: Do you feel you have any obligation to repay this loan?

A: Of course. Of course, but they're not due yet.

Q: When are they going to be due?

A: The way they're drafted when the director of the Bahamian corporation makes a demand I'm going to have to pay it. Yeah, I have to repay it.

Q: And if that never happens you never have to pay, right?

A: Theoretically that's correct.

In violation of Title 18, United States Code, Section 1621.

COUNT TWENTY-NINE
(Income Tax Evasion - 1997)

70. The allegations in paragraphs 1 through 48 above are realleged as if set forth in full here.

71. On or about October 15, 1998, defendant **CHARLES D. CONWAY** signed and caused to be filed with the Internal Revenue Service a 1997 U.S. Individual Income Tax Return, Form 1040 (the "1997 Return"). The 1997 Return stated that **CONWAY'S** taxable income for the calendar year 1997 was \$0, that the amount of tax due and owing thereon was \$0 and he was entitled to a refund of \$12,083.

72. On Schedule E of the 1997 Return **CONWAY** claimed a \$67,584 loss from SCS Global Investment. Since **CONWAY'S** capital contribution to SCS came from money he embezzled from the Greenberger Foundation, as alleged in Paragraph 15 of this Indictment, his claim of loss was fraudulent.

73. Defendant **CONWAY** had taxable income for the year of approximately \$54,644, upon which an income tax of approximately \$9,811 was due and owing to the United States.

74. On or about October 15, 1998, in the District of New Jersey, defendant

CHARLES D. CONWAY

knowingly and willfully did attempt to evade and defeat a substantial part of the income tax due and owing to the United States in that he signed and caused to be filed with the Internal Revenue Service the tax return described in paragraph 71, knowing it to be false and fraudulent as described in paragraphs 72

through 73.

In violation of Title 26, United States Code, Section 7201.

COUNT THIRTY
(Income Tax Evasion-1998)

75. The allegations in paragraphs 1 through 48 above are realleged as if set forth in full here.

76. On or about October 15, 1999, defendant **CHARLES D. CONWAY** signed and caused to be filed with the Internal Revenue Service a 1998 U.S. Individual Income Tax Return, Form 1040 (the "1998 Return"). The 1998 Return stated that **CONWAY'S** taxable income for the calendar year 1998 was \$27,807, that the amount of tax due and owing thereon was \$4,174 and that **CONWAY** was entitled to a refund of \$7,126.

77. On Schedule C of the 1998 Return **CONWAY** falsely claimed a \$175,000 loss from SCS Global Investment. Since **CONWAY'S** capital contribution to SCS came from money he embezzled from the Greenberger Foundation, as alleged in Paragraph 15 of this Indictment, his claim of loss was fraudulent.

78. Defendant **CONWAY** had additional taxable income for the year of approximately \$190,288, upon which an additional income tax of approximately \$58,368 was due and owing to the United States.

79. On or about October 15, 1999, in the District of New Jersey, defendant

CHARLES D. CONWAY

knowingly and willfully did attempt to evade and defeat a substantial part of the income tax due and owing to the United States in that he signed and caused to be filed with the Internal Revenue Service the tax return described in paragraph 76, knowing

it to be false and fraudulent as described in paragraphs 77 and 78.

In violation of Title 26, United States Code, Section 7201.

COUNT THIRTY-ONE
(Income Tax Evasion-1999)

80. The allegations in paragraphs 1 through 48 above are realleged as if set forth in full here.

81. On or about October 16, 2000, defendant **CHARLES D. CONWAY** signed and caused to be filed with the Internal Revenue Service a 1999 U.S. Individual Income Tax Return, Form 1040 (the "1999 Return"). The 1999 Return stated that **CONWAY'S** taxable income for the calendar year 1999 was \$53,863, that the amount of tax due and owing thereon was \$9,489 and that **CONWAY** was entitled to a refund of \$2,000.

82. Defendant **CONWAY'S** unreported taxable income for the year was approximately \$149,876, upon which an additional income tax of approximately \$45,231 was due and owing to the United States.

83. On or about October 16, 2000, in the District of New Jersey, defendant

CHARLES D. CONWAY

knowingly and willfully did attempt to evade and defeat a substantial part of the income tax due and owing to the United States in that he signed and caused to be filed with the Internal Revenue Service the tax return described in paragraph 81, knowing it to be false and fraudulent as described in paragraph 82.

In violation of Title 26, United States Code, Section 7201.

COUNT THIRTY-TWO
(Tax Evasion-2000)

84. The allegations in paragraphs 1 through 48 above are realleged as if set forth in full here.

85. On or about January 2, 2002, defendant **CHARLES D. CONWAY** signed and caused to be filed with the Internal Revenue Service a 2000 U.S. Individual Income Tax Return, Form 1040 (the "2000 Return"). The 2000 Return stated that **CONWAY'S** taxable income for the calendar year 2000 was \$49,547, that the amount of tax due and owing thereon was \$8,173 and that **CONWAY** was entitled to a refund of \$4,847.

86. Defendant **CONWAY'S** unreported taxable income for the year was approximately \$253,145, upon which an additional income tax of approximately \$84,262 was due and owing to the United States.

87. On or about January 2, 2002, in the District of New Jersey, defendant

CHARLES D. CONWAY

knowingly and willfully did attempt to evade and defeat a substantial part of the income tax due and owing to the United States in that he signed and caused to be filed with the Internal Revenue Service the tax return described in paragraph 85, knowing it to be false and fraudulent as described in paragraph 86.

In violation of Title 26, United States Code, Section 7201.

COUNT THIRTY-THREE
(Tax Evasion-2001)

88. The allegations in paragraphs 1 through 48 above are realleged as if set forth in full here.

89. During the calendar year 2001 the defendant, **CHARLES D. CONWAY**, a resident of Ocean County, New Jersey, had and received taxable income of approximately \$497,146.43 upon which there was due and owing to the United States an income tax of approximately \$158,554.

90. On or about April 15, 2002, in the District of New Jersey, the defendant

CHARLES D. CONWAY,

did knowingly and wilfully attempt to evade and defeat the said income tax due and owing him to the United States for the calendar year 2001 by failing to make an income tax return on or before April 15, 2002, as required by law, to any proper officer of the Internal Revenue Service, by failing to pay to the Internal Revenue Service said income tax, and did conceal and attempt to conceal from all proper officers of the United States of America his true and correct income by filing and causing to be filed an Extension of Time to File Personal Income Tax Returns, Form 4868, on or about April 15, 2002, in which he stated that there was no tax due and owing for the calendar year 2001.

In violation of Title 26, United States Code, Section 7201.

FORFEITURE ALLEGATIONS

91. The allegations contained in Counts Twelve through Twenty-Five of this Indictment are incorporated as if set forth at length herein for the purpose of noticing forfeiture pursuant to Title 18, United States Code, Section 982(a)(1).

92. Upon conviction of one or more of the offenses charged in Counts Twelve through Twenty-Five of this Indictment, the defendant **CHARLES D. CONWAY** shall forfeit to the United States any property constituting or derived from proceeds obtained directly or indirectly as a result of the said violation(s), including but not limited to the property listed below.

a. All right, title, and interest in any and all property involved in each offense in violation of Title 18, United States Code, Sections 1956 and 1957, for which defendant is convicted, and all property traceable to such property, including the following:

i) all money and other property that was the subject of each transaction, transportation, transmission, and transfer in violation of Sections 1956 and 1957;

ii) all commissions, fees and other property constituting proceeds obtained as a result of those violations;

iii) all property used in any manner and part to commit and to facilitate the commission of those violations including real property located at 813 South Bay Avenue, Beach Haven, New Jersey also identified as Lot 1 Block 100, Borough of Beach Haven, New Jersey;

iv) the contents of Investacorp account E5-60601 in the name of Charles D. Conway;

v) the contents of Fleet National Bank accounts 9438344802 in the name of The KEC Family Limited, 9438344300 in the name of Charles D. Conway and 9438344044 in the name of The KEC Family Limited.

b. A money judgment in the amount of \$1,372,781.41, representing the total amount of money involved in the offenses set forth in Counts Twelve through Twenty-Five for which the defendant **CHARLES D. CONWAY** is liable.

93. Pursuant to Title 21, United States Code, Section 853 (p) as incorporated by Title 18, United States Code, Section 982(b), the defendant, **CHARLES D. CONWAY** shall forfeit substitute property, up to the value of the amount described in paragraph 92 above, if, by any act and omission of the defendant, the property described in paragraph 92, or any portion thereof:

- a. cannot be located upon the exercise of due diligence;
- b. has been transferred, sold to or deposited with a third party;
- c. has been placed beyond the jurisdiction of the court;
- d. has been substantially diminished in value; or
- e. has been commingled with other property which cannot be divided without difficulty.

pursuant to Title 18, United States Code, Section 982(a)(1).

A TRUE BILL

FOREPERSON

CHRISTOPHER J. CHRISTIE
United States Attorney